

ORIGINAL

July 14 2008

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July 10, 2008

FILED

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Montana Supreme Court
Box 203003
Helena, MT 59620-3003

Re: Proposed Rule 3.10 of the Montana Code of Judicial Conduct

Dear Honorable Justices,

I am writing in opposition to the proposed rule change. For purposes of identification, I have been practicing law for 24 years. I have handled cases in at least 25 counties in Montana, and several states. Much of my practice has been before courts of non-record. I am currently Chairman of the Criminal Section of the State Bar and past president and founder of the Montana Association of Criminal Defense Lawyers. I am a member of the Association of Professional Responsibilities Lawyers, and I routinely handle ethics cases for professionals in several states. I am familiar with the current Montana canons of judicial ethics.

My objection is pragmatic in nature. I believe it is well-founded from an ethical standpoint as well. Montana is a poor state, and we are lucky to have numerous lawyers on the bench in lower courts. While the non-lawyer judges can be equally effective, there is a distinct advantage to practicing before a lawyer judge, in as much as they generally have a better understanding of the law and the rules of ethics. I find that their decisions are better founded, in many cases, which relieves the need on the part of the litigants to have the case reviewed by a district court judge. This is a benefit to the district court and leads to more judicial economy.

- FELLOW: AMERICAN BOARD OF CRIMINAL LAWYERS •
- LIFE MEMBER: NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS • LIFE MEMBER: MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS •
- PRESIDENT EMERITUS (1998-1999) • CHAIRMAN: CRIMINAL SECTION-MONTANA STATE BAR (1999-PRESENT) •
- MEMBER: MONTANA TRIAL LAWYERS ASSOCIATION • PROVISIONAL MEMBER: AMERICAN ACADEMY OF FORENSIC SCIENCES •

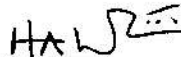
As a practical matter, I have worked with at least four lawyer judges on private cases, some of them extensively. I have also litigated against lawyer judges in their practices of law. I cannot think of any example of being disadvantaged or benefitting from the professional association with the lawyer judge, when I have wound up with a case before him/her, in the judicial capacity.

I believe that this proposed rule change would exercise a profound effect on the quality of justice in Montana, of a negative nature, and degrade the quality of candidates for judicial positions in courts of non-record, based on purely economic considerations.

I believe my opinion is well-founded and would be shared by the vast majority of lawyers in this state who practice before courts of non-record.

On a different note, to the extent that anyone perceives a lawyer judge to be acting inconsistently with his professional ethical responsibilities, either judicial or otherwise, it is always that party's option to file a complaint against the lawyer judge, based on the code of professional responsibility, or the judicial code of ethics. The problem that this rule change is calculated to address should be handled on a case by case basis and not in the form of a rule change which will undermine the incentive of lawyers to take "part-time" jobs as judges in courts of non-record. I do not believe judicial independence will suffer.

Sincerely,



Herman A. Watson, III

HAW/nhw